

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 678 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUMAR KASAM PINJARA

Versus

AYSA NOORMOHMAD

Appearance:

NANAVATY ADVOCATES for Petitioner

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/07/98

ORAL JUDGEMENT

Heard learned advocate Mr. Nanavati for the petitioner.

2. This petition has been preferred by a Muslim husband who has been ordered to pay maintenance to his wife, respondent No. 1 herein. On Misc. Criminal Application No. 84 of 1986 preferred by the respondent no. 1, the Court of learned Judicial Magistrate, First

Class, Porbandar had directed the petitioner, inter alia, to pay monthly maintenance of Rs. 250/- to the respondent no. 1. Respondent No. 1 thereafter preferred Criminal Misc. Application No. 219 of 1991 under Section 127 CrPC and under Order dated 9th March, 1994, the maintenance payable to the respondent no. 1 was enhanced to Rs. 400/-. It appears that since then the petitioner has divorced the respondent No. 1 and it is the claim of the petitioner that the divorce given by the petitioner is in accordance with his personal law and is legal and valid. The petitioner, therefore, moved Criminal Misc. Application 214 of 1995 under Section 127 CrPC and contended that the respondent No.1 being a divorced muslim woman was entitled to maintenance as provided under Section 3 of the Muslim Women {Protection of Rights on Divorce} Act, 1986 [hereinafter referred to as "the Act"] and the order of maintenance made in her favour under Sections 125 & 127 CrPC be set aside. The said application was rejected by the learned Magistrate under his judgment and order dated 14th September, 1994. Feeling aggrieved, the petitioner preferred Criminal Revision Application No. 21 of 1997 which too was dismissed by the learned Addl. Sessions Judge, Porbandar on 7th September, 1998. Feeling aggrieved, petitioner has preferred the present petition under Article 227 of the Constitution of India.

Mr. Nanavati has relied upon definition of words, "Divorced woman" contained in Section 2 (a) of the Act and has submitted that respondent No. 1 is a divorced woman as defined under the Act. Relying on Section 3 of the Act, he has submitted that a muslim divorced woman is entitled to maintenance as provided under Section 3 of the Act and any order made under Section 125 or 127 CrPC would, on commencement of the Act, become inoperative. He has further submitted that while giving divorce to the respondent no. 1, the petitioner had offered a sum of Rs.1800/- being the amount of Iddat and had also offered Rs. 251/- being amount of Mahr. Petitioner had thus discharged his liability to maintain Respondent no. 1 as provided under Section 3 of the Act and the previous order made under Sections 125 and 127 CrPC, therefore, require to be set-aside.

I am afraid, I cannot accept the contentions raised by Mr. Nanavati. This Court, in the matter of Arb Ahemadhia Abdulla & Ors. v. Arab Bail Mohmuna Saiyadbhai & Ors., {AIR 1988 Gujarat 141} had an occasion to examine the provisions of the Act. Having so examined the provisions of the Act, this Court has held that a

divorced muslim woman is entitled to maintenance from her former husband not only during the period of Iddat but also after the expiration of the period of Iddat and such amount is required to be fair and reasonable. In view of the said judgment, it cannot be said that by offering to pay the amount of Iddat and Mahr, the petitioner had discharged his liability to provide reasonable and fair maintenance to his former wife, the respondent no. 1 herein. Further, the Court having examined the provisions contained in Section 5 of the Act has held that by the enactment of the Act, the order passed by the learned Magistrate under Section 125 CrPC ordering muslim husband to pay maintenance to his divorced wife would not be nonest. There is no provision in the Act which would nullify the order passed by the learned Magistrate under Section 125 CrPC. Once the order under Section 125 CrPC granting maintenance to the divorced woman is passed, her rights are crystallised. She gets right to recover maintenance from her former husband. That right is not taken away by the Parliament. In view of the above judgment, both the contentions raised by Mr.Nanavati are required to be rejected. Application is, therefore, summarily rejected.

Prakash*